



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00264/2016

THE IMMIGRATION ACTS

Heard at Bradford  
On 22<sup>nd</sup> May 2017

Decision & Reasons Promulgated  
On 31<sup>st</sup> May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR S.U.  
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Diwncyz, Senior Home Office Presenting Officer  
For the Respondent: Miss Hulse, Counsel

Anonymity

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Appellant in these proceedings is the Secretary of State. Mr. S.U. is the Respondent. However for the sake of clarity I shall refer to the parties as they were before the First-tier Tribunal; the Secretary of State as “the Respondent” and Mr S.U. as “the Appellant”.

2. The Appellant is a citizen of Sri Lanka born 29<sup>th</sup> September 1980. He is married. His wife, who is a dependent upon his claim, is also a citizen of Sri Lanka. The Appellant and his wife have a young daughter born in the United Kingdom.
3. The Appellant originally entered the UK as a student in 2010. He remained in the UK and was granted an extension to his original visa for post study leave valid to December 2015. On 13<sup>th</sup> May 2014 he returned to Sri Lanka in order to marry his wife. Following the wedding he returned to the UK on 26<sup>th</sup> May 2014. His wife remained in Sri Lanka arriving in the UK at a later date.
4. On 16<sup>th</sup> January 2015 the Appellant applied outside the Rules for leave to remain indefinitely. This was refused on 26<sup>th</sup> April 2015 and thereafter he claimed asylum citing mistreatment by the authorities in Sri Lanka on account of his Tamil ethnicity and because the authorities suspected him of involvement with the LTTE. The Appellant claimed that when he was working in a first aid camp for a voluntary organisation, he aided the escape of three wounded LTTE members. He helped the three escape for humanitarian reasons and because one of the escapees was an old classmate. In addition his wife was mistreated by the authorities when they came looking for him after he left Sri Lanka to return to the UK.
5. The Respondent did not accept the claim and refused it by a decision dated 23<sup>rd</sup> December 2015. The Appellant appealed to the First-tier Tribunal.
6. His appeal was heard by the First-tier Tribunal (Judge Andonian) on 25<sup>th</sup> November 2016 and by a decision promulgated on 21<sup>st</sup> December 2016, it was allowed.
7. Application for permission to appeal the FtT's decision was lodged by the Respondent and permission was granted by First-tier Tribunal Judge Chohan. The permission grant which refers to the grounds of application set out that permission was sought because:
  - the judge failed to make adequate findings of fact and give proper reasons for his decision; and
  - the judge failed to give proper consideration to the country guidance case of **GI (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC)**. Permission having been granted, the matter came before me in the Upper Tribunal to determine whether the decision of the First-tier Tribunal contains such error of law requiring it to be set aside and remade.

### UT Hearing

8. Before me Mr Diwncyz appeared for the Secretary of State and Miss Hulse for the Appellant. Mr Diwncyz referred to the grounds seeking permission. He submitted that the FtT had failed to make proper findings of fact on the central issue, which was whether the Appellant's claim that he was suspected by the Sri Lankan authorities of being involved with the LTTE was a credible one. The Secretary of State had set out

in the Reasons for Refusal letter detailed reasons why the claim was not made out. The FtT had simply not dealt with these points.

9. Further there had been no proper consideration of the country guidance case of **GJ and Others**. These were material errors requiring the decision to be set aside and remade with a proper consideration of the evidence.
10. Miss Hulse on behalf of the Appellant said that she accepted that the decision was succinct but said that it addressed both issues complained of by the Respondent. She referred to [30] and said it is clear that the judge, by referencing the medical evidence including the psychiatric report, accepted that the Appellant had a fear of being returned to Sri Lanka. The medical evidence supported his case.
11. She then referred to [28] and submitted firstly that the judge had recognised that the Appellant was relying on **GJ and Others** but that he was also relying on paragraph 50 of **NT** (no citation in the FtT decision). She submitted that the judge had kept in mind evidence which was before him that the Appellant had engaged in diaspora activity by attending demonstrations against the Sri Lankan Government. I asked her to take me to that part of the FtT's decision where the judge discussed and made findings that the Appellant had attended demonstrations in the UK. (Miss Hulse had appeared at the original hearing before the FtT). She accepted that she was unable to point to clear findings of fact in the decision concerning demonstrations that the Appellant claimed to have attended in the UK. This was despite evidence being led at the FtT hearing.
12. Finally, Miss Hulse referred to [31] and [32] of the decision and said that the judge had acknowledged that the Appellant's wife was tearful when recounting her claim of being raped and that he had to rise to allow her to recompose. She submitted that the judge noted that the Appellant himself was in tears when recounting the beatings and pain he had sustained. She said that, in noting this, the judge made it clear that he accepted the Appellant's account as credible. Whilst she accepted that the decision was succinct, nevertheless it was a sustainable one.

### **Consideration of Error of Law**

13. I find I am satisfied that the decision of the FtT contains an error of law requiring it to be set aside and remade. It is correct that the judge sets out in a considerable amount of detail, the Appellant's case as given in oral evidence before him [7] to [15]. He also sets out the Appellant's immigration history and details of the medical evidence put forward on the Appellant's behalf. There was a good deal of evidence which required analysis.
14. There then follows in the decision a heading entitled "Conclusions". Under that heading the judge simply once more spends several paragraphs reiterating parts of the Appellant's case, the burden of proof, and the S.8 issue.
15. It is not until the end of the decision at [31] that there is any reasoning which could be said to arrive at a conclusion. It amounts to this, the judge saying in one sentence

that the evidence in cases such as this has to be looked at holistically. He then notes the demeanour of the Appellant (and his wife) when giving evidence and simply sums up the appeal at [32] with the words:

“Having regard to all the circumstances of the case and the objective evidence I believe the appellant’s (sic) have discharged the burden of proof incumbent upon them on the lower standard.”

16. This decision I find falls far short of that required to show that the judge has dealt with the issues raised by the Respondent. The judge has simply accepted the Appellant’s credibility without showing the pathway by which he has reached that conclusion. This has led to a failure to acknowledge and grapple with the central issue which was that the Respondent did not accept the Appellant’s claim that he was suspected of being involved with the LTTE in Sri Lanka.
17. Added to this and interrelated to the central issue it is incumbent upon a Tribunal dealing with an appeal such as this one to have careful regard to the guidance issued by the Upper Tribunal in the relevant CG case law in order to evaluate the risk on return. I see no proper consideration or application of **GJ**. The only reference to **GJ** is contained in [28] and amounts to two lines saying:

“the Appellant relied on GJ and Others and the head notes there provided. He also relied on MP and NT and paragraph 50 (sic).”

18. Furthermore it was part of the Appellant’s case seemingly that he had been involved in demonstrations in the UK, and potentially this would mean that he came to the notice of the Sri Lankan Authorities on return. Miss Hulse said this evidence was put before the judge. However there is no finding made on this evidence, merely a passing reference in [26]. This reinforces my conclusion that the judge has not demonstrated that he has proper regard to the relevant case law.
19. For the foregoing reasons I find that there are material errors of law in the judge’s decision allowing the Appellant’s appeal. The decision is set aside in its entirety. It will have to be remade. Because of the nature and extent of judicial fact-finding necessary for the decision to be remade, I find it is appropriate to remit the case to the First-tier Tribunal. The fresh hearing should be before a judge other than Judge Andonian.

### **Notice of Decision**

The Secretary of State’s appeal is allowed. The matter is now remitted to the First-tier Tribunal for the decision to be remade (not Judge Andonian).

Signed

C E Roberts

Date

28 May 2017

Deputy Upper Tribunal Judge Roberts

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

C E Roberts

Date

28 May 2017

Deputy Upper Tribunal Judge Roberts